

FROM A TO ARBITRATION

EPISODE 26-JUST CAUSE PRINCIPLE: WAS A THOROUGH INVESTIGATION COMPLETED



EXPLICIT CONTENT (LANGUAGE)

- THIS EPISODE DOES CONTAIN EXPLICIT LANGUAGE CONTENT AND COREY STARTS THE EPISODE OFF WITH A WARNING OF FOUL LANGUAGE IN THE PODCAST ON THIS EPISODE

ARTICLE 16.1 JUST CAUSE PRINCIPLE

- WAS A THOROUGH INVESTIGATION COMPLETED?
 - BEFORE ADMINISTERING THE DISCIPLINE, MANAGEMENT **MUST** MAKE AN INVESTIGATION TO DETERMINE WHETHER THE EMPLOYEE COMMITTED THE OFFENSE. MANAGEMENT **MUST** ENSURE THAT ITS INVESTIGATION IS THOROUGH AND OBJECTIVE. **THIS IS THE EMPLOYEE'S DAY IN COURT PRIVILEGE.** EMPLOYEES HAVE THE **RIGHT TO KNOW** WITH REASONABLE DETAIL WHAT THE CHARGES ARE AND TO BE GIVEN A REASONABLE OPPORTUNITY TO DEFEND THEMSELVES BEFORE THE DISCIPLINE IS INITIATED.

JUST CAUSE PRINCIPLE: WAS A THOROUGH INVESTIGATION COMPLETED?

- THIS IS THE MOST IMPORTANT PART OF THE JUST CAUSE SECTION OF ARTICLE 16.1 BECAUSE THERE ARE A HUNDRED THINGS THAT WE CAN DO TO CATCH MANAGEMENT ON AS THEY RARELY ACTUALLY DO ANY INVESTIGATION AT ALL
- IN YOUR CONTENTIONS YOU HAVE TO PROVE WHERE MANAGEMENT LACKED IN THEIR INVESTIGATION TO BE THOROUGH

DEFENSES TO DISCIPLINE

- WHENEVER YOU ARE DEALING WITH A DISCIPLINE CASE AS A SHOP STEWARD YOU NEED TO START WITH ARTICLE 16 AND THE DEFENSES TO DISCIPLINE HANDBOOK TO START BUILDING YOUR CASE FILE.

THE INVESTIGATIVE INTERVIEW

- WHEN IN THE INVESTIGATIVE INTERVIEW: THE INTERVIEW ITSELF MUST GIVE THE CARRIER THE RIGHT TO HEAR WHAT THE FULL AND COMPLETE CHARGE IS AGAINST THEM AND ALSO HAVE THIS DAY IN COURT TO DEFEND THEMSELVES SO THAT THE CASE DOES NOT PROGRESS ANY FURTHER THAN THE INVESTIGATIVE INTERVIEW
- PAY ATTENTION TO THE LANGUAGE THAT MANAGERMENTS SITES IN THEIR CHARGE IN THE INTERVIEW

INVESTIGATIVE INTERVIEW EXAMPLE

- THIS IS AN INVESTIGATIVE INTERVIEW. DO YOU UNDERSTAND THAT THE FINDINGS OF THIS INTERVIEW COULD LEAD TO DISCIPLINE INCLUDING AND UP TO REMOVAL FROM THE POSTAL SERVICE?
 - YES
- ELM 665.3 COOPERATION AND INVESTIGATIONS STATES: EMPLOYEES MUST COOPERATE IN ANY POSTAL INVESTIGATION INCLUDING OFFICE OF INSPECTOR GENERAL INVESTIGATIONS. DO YOU UNDERSTAND?
 - YES
- ON 10/3/2020 WERE YOU INVOLVED IN AN MOTOR VEHICLE ACCIDENT?
 - YEAH

INVESTIGATIVE INTERVIEW EXAMPLE

- ARE YOU AWARE THAT YOU ARE TO CONDUCT YOURSELF IN A SAFE MANNER?

- OF COURSE

- HOW DID THIS ACCIDENT OCCUR?

- ON 10/3 I WAS DRIVING DOWN THIS DRIVE, I WAS TURNING INTO THE DRIVE WAY AT THIS ADDRESS. AFTER DELIVERING THE PACKAGE I GOT BACK INTO MY TRUCK AND I BEGAN TO BACK OUT. I HIT A DIP WHICH MADE MY FOOT SLIP OFF THE BREAK AND TO THE GAS CAUSING ME TO HIT A BLACK BMW ACROSS THE STREET FROM THIS ADDRESS.

- WERE YOU PULLED INTO THE DRIVEWAY OF THAT ADDRESS, CORRECT?

- YES

INVESTIGATIVE INTERVIEW EXAMPLE

- CAN YOU PLEASE TELL ME WHAT THE BACKING POLICY IS AT THE UNITED STATES POSTAL SERVICE?
 - DON'T BACK FOR MIS DELIVERIES AND MISSED BOXES. CHECK BEFORE BACKING, AVOID AND ONLY DO IT ONLY WHEN IT IS NECESSARY
- NOW IS YOUR OPPORTUNITY TO EXPLAIN WHY YOU PUT YOURSELF IN AN UNNECESSARY BACKING SITUATION.
 - IT'S A NARROW ROAD SO I WOULDN'T BLOCK TRAFFIC.

INVESTIGATIVE INTERVIEW EXAMPLE

- YOU HAVE BEEN INSTRUCTED THAT IF YOU MUST BACK YOUR LLV THAT YOU DO THIS BACKING PRIOR TO DISMOUNT. WHY DIDN'T YOU BACK PRIOR TO DISMOUNTING YOUR LLV?
 - IT WAS A SHORT DRIVEWAY SO YOU COULDN'T 3 POINT TURN. THE ONLY REASON I DID IT WAS BECAUSE THE ROAD IS NARROW AND THERE WAS TRAFFIC BEHIND ME.
- WHAT ACTIONS DID YOU TAKE TO AVOID THIS BACKING?
 - NOTHING REALLY COULD HAVE BEEN DONE
- IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD?
 - NO

WAIT FOR IT....

- SO AT THIS POINT MANAGEMENT HAS ONLY SITED THE ELM 665.3. NOTHING OTHER THAN THAT
- MANAGEMENT THEN COMES BACK TO THE CARRIER AND DOES YET ANOTHER INVESTIGATIVE INTERVIEW

NEW AND IMPROVED INVESTIGATIVE INTERVIEW

- THIS IS AN INVESTIGATIVE INTERVIEW, DO YOU UNDERSTAND THAT THE FINDINGS OF THIS INTERVIEW COULD LEAD TO DISCIPLINE UP TO AND INCLUDING REMOVAL FROM THE POSTAL SERVICE?
 - YES
- ELM 665.3 COOPERATION AND INVESTIGATIONS STATES: EMPLOYEES MUST COOPERATE IN ANY POSTAL INVESTIGATION INCLUDING OFFICE OF INSPECTOR GENERAL INVESTIGATIONS. DO YOU UNDERSTAND?
 - YES
- DURING YOUR INVESTIGATIVE INTERVIEW ON 10/5 YOU INFORMED SUPERVISOR SO AND SO THAT YOU HAD TO PULL INTO THE DRIVEWAY IN ORDER TO AVOID BLOCKING TRAFFIC, CORRECT?
 - ROGER

NEW AND IMPROVED II CONTINUED

- COULD YOU HAVE PARKED YOUR LLV BEHIND THE CAR THAT YOU BACKED INTO?
 - NOT AT THE TIME, I WAS BESIDE IT AND THE CAR WERE CARS BEHIND ME
- COULD YOU HAVE PARKED YOUR LLV IN FRONT OF THE CAR THAT YOU BACKED INTO?
 - NO. THEN I WOULD HAVE BEEN BLOCKING A DRIVEWAY
- WHAT ABOUT PAST THE DRIVEWAY?
 - I WOULD HAVE BEEN TO THE NEXT HOUSE. I WAS TRYING TO GET OUT OF THE WAY OF TRAFFIC
- IS THERE ANYTHING YOU WOULD LIKE TO ADD?
 - NOTHING I DID WAS UNSAFE. I FOLLOWED THE RULES. MY FOOT BOUNCED OFF THE BRAKE. I FOLLOWED THE RULES THAT APPLIED

WHAT WE ARE LOOKING FOR

- SO AT THIS POINT MANAGEMENT HAS ASKED THE CARRIER TWICE ABOUT THE ELM 665.3 COOPERATION IN INVESTIGATIONS
- IN THE SUMMARY OF THE SUPERVISOR, THE REQUESTING OFFICIAL, STATES IN PART:
 - I FIND GONZALES IN VIOLATION OF ELM 814.2 RESPONSIBILITY

THE ELM 814

- 814.2 RESPONSIBILITY :
 - A. COMPLYING WITH ALL OSHA AND POSTAL SERVICE SAFETY AND HEALTH REGULATIONS, PROCEDURES, AND PRACTICES, INCLUDING THE USE OF APPROVED PERSONAL PROTECTIVE EQUIPMENT.
 - B. KEEPING THE WORK AREA IN A SAFE AND HEALTHFUL CONDITION THROUGH GOOD HOUSEKEEPING AND PROPER MAINTENANCE OF PROPERTY AND EQUIPMENT.
 - C. REPORTING RECOGNIZED SAFETY HAZARDS AND UNSAFE WORKING CONDITIONS IMMEDIATELY
 - D. PERFORMING ALL DUTIES IN A SAFE MANNER
 - E. KEEPING PHYSICALLY AND MENTALLY FIT TO MEET THE REQUIREMENTS OF THE JOB
 - F. REPORTING TO THEIR SUPERVISORS IMMEDIATELY ANY ACCIDENT OR INJURY IN WHICH THEY ARE INVOLVED, REGARDLESS OF THE EXTENT OF INJURY OR DAMAGE
 - G. DRIVING DEFENSIVELY AND PROFESSIONALLY, EXTENDING COURTESY IN ALL SITUATIONS AND OBEYING ALL STATE, LOCAL, AND POSTAL SERVICE REGULATIONS WHEN DRIVING A VEHICLE

SO FAR WE HAVE THIS...

- SO NOW MANAGEMENT IS ADDING ELM 814.2 ON TOP OF THE 665.3 THAT THEY CITED IN THE INVESTIGATIVE INTERVIEW
- THE SUPERVISOR GOES ON TO STATE THAT SHE ALSO FINDS GONZALES IN VIOLATION OF ELM 831.332
- NEITHER OF THESE WERE EVEN ASKED ABOUT IN THE INVESTIGATIVE INTERVIEW WITH THE CARRIER AND THIS IS THE FIRST TIME WE ARE HEARING ABOUT THOSE SECTIONS OF THE ELM
- THE CARRIER WAS NEVER INFORMED OF EITHER OF THESE INFRACTIONS DURING THEIR DAY IN COURT

ELM 831.332 STATES THIS

- DRIVERS' RESPONSIBILITIES
- DRIVERS MUST
 - A. DRIVE SAFELY AND DEFENSIVELY
 - B. PRACTICE PERSONAL SAFETY
 - C. OBEY ALL STATE AND LOCAL TRAFFIC LAWS AND POSTAL SERVICE DRIVING POLICIES
 - D. EXTEND COURTESY IN ALL SITUATIONS
 - E. NOT USE A CELL PHONE WHILE DRIVING. DRIVERS MUST PULL OFF THE ROAD TO A SAFE LOCATION BEFORE USING THE PHONE

LETTER OF CHARGES

- YOUR ACTIONS AS DESCRIBED ABOVE ARE IN VIOLATION OF THE FOLLOWING POSTAL SERVICE VIOLATIONS:
 - EMPLOYEE AND LABOR RELATIONS MANUAL : ELM 665.13 DISCHARGE OF DUTIES, SECTION 665.15 OBEDIENCE OF ORDERS, ELM 814.2 RESPONSIBILITIES AND SECTION 831.332 DRIVING RESPONSIBILITIES, HANDBOOK M-41 CITY CARRIERS DUTIES AND RESPONSIBILITIES SECTION 112.12 DILIGENCE AND PROMPTNESS-OBEY THE INSTRUCTIONS OF YOUR MANAGER, HANDBOOK EL-814 POSTAL EMPLOYEES GUIDE TO SAFETY SECTION I:GENERAL SAFETY RULES AND SECTION X:MOTOR VEHICLES,

WHAT IS WRONG WITH THAT CHARGE

- THE ELM 665.13 WAS NEVER ASKED ABOUT IN THE INVESTIGATIVE INTERVIEW AND THAT WAS NOT ONE THAT THE SUPERVISOR SENT UP WITH HER REQUEST, HER NOTES, FOR APPROPRIATE ACTION SAYING THAT THE CARRIER HAD VIOLATED IT
- THE ELM 665.15 WAS ALSO NOT ASKED ABOUT IN THE INVESTIGATIVE INTERVIEW AND NOT IN HER REQUEST FOR APPROPRIATE ACTION
- ELM 814.2 AND ELM 831.332 WERE IN THE INVESTIGATIVE INTERVIEW AND ALSO IN THE REQUEST

WHAT IS WRONG WITH THAT CHARGE

- M-41 112.12-CARRIERS DUTIES AND RESPONSIBILITIES WAS NEVER MENTIONED DURING THE INVESTIGATIVE INTERVIEW OR IN THE REQUEST FOR APPROPRIATE ACTION
- HANDBOOK EL-814 POSTAL EMPLOYEES GUIDE TO SAFETY SECTION I:GENERAL SAFETY RULES AND X:MOTOR VEHICLES WAS ALSO NEVER MENTIONED IN THE II OR IN THE NOTES FOR REQUEST FOR APPROPRIATE ACTION

UPHOLDING THE DAY IN COURT

- ANYTIME THE STEWARDS SEES THAT MANAGEMENT HAS ADDED NEW REGULATIONS, RULES OR HANDBOOKS INTO A CHARGE THAT WAS NOT COVERED IN THE INVESTIGATIVE INTERVIEW THEY NEED TO JUMP ALL OVER THAT, BECAUSE THE CARRIER WAS NOT GIVEN HIS OPPORTUNITY TO DEFEND THEMSELVES AGAINST THOSE PROVISIONS THUS NOT GETTING THEIR DAY IN COURT

C-31277 ARBITRATOR WOLITZ

- ON CROSS EXAMINATION, SUPERVISOR REED ACKNOWLEDGED THAT THERE IS NO SPECIFIC PROVISION THAT SHE REFERRED TO THAT SAYS SPECIFICALLY THAT A CARRIER MUST REPORT A LOST KEY TO HIS SUPERVISOR. SHE SAID THAT SHE TOLD THEM THAT IN HER SERVICE TALK. SHE ACKNOWLEDGED THAT THE SERVICE TALK ON P. 70 DOES NOT SPECIFICALLY SAY THAT THEY MUST NOTIFY THEIR SUPERVISOR. MR. EDGERSON CLOCKED OUT AND LEFT. HE LOOKED FOR THE KEY OFF THE CLOCK. THERE IS LANGUAGE IN THE M-39 AND THE M-41 ON ACCOUNTABLES. ARROW KEYS ARE ACCOUNTABLE ITEMS. SUPERVISOR REED ACKNOWLEDGED THAT IT DOES NOT SAY THAT A CARRIER MUST REPORT A LOST ITEM TO HIS SUPERVISOR. SHE ACKNOWLEDGED THAT IT DOES NOT SAY WHAT CARRIERS ARE SUPPOSED TO DO.

C-31277 ARBITRATOR WOLITZ

- SUPERVISOR REED SAID THAT AT THE INVESTIGATIVE INTERVIEW, MR. EDGERSON ACKNOWLEDGED THAT THERE WAS A SUPERVISOR ON DUTY. IT SAYS IN THE NOTICE OF REMOVAL: YOU ACKNOWLEDGED THAT THERE WAS A SUPERVISOR ON DUTY WHEN YOU RETURNED TO THE OFFICE AND FAILED TO CLEAR THE ACCOUNTABLE CAGE. YOU SAID YOU DID NOT KNOW WHY YOU DID NOT NOTIFY THE SUPERVISOR OF THE LOST ARROW KEY. YOU SAID YOU TOLD THE CLERK. THE NOTES ON THE INVESTIGATIVE INTERVIEW DO NOT SAY THAT HE SAID THAT A SUPERVISOR WAS ON DUTY. QUESTION 5. ASKS: UPON RETURN TO OFFICE DID YOU CLEAR THE ACCOUNTABLE CAGE? WAS THE SUPERVISOR ON DUTY NOTIFIED THAT YOU LOST YOUR ARROW KEY. IF NOT WHY?

C-31277 ARBITRATOR WOLITZ

- MR. EDGERSON ANSWERED: YES. I DON'T KNOW. I TOLD THE CLERK. WE NOTE THAT, IN FACT, HE SAID HE DIDN'T KNOW IF A SUPERVISOR WAS ON DUTY. SUPERVISOR REED SAID ON CROSS EXAMINATION: GUESS HE DIDN'T ACKNOWLEDGE IT. SUPERVISOR REED ACKNOWLEDGED THAT IN THE INVESTIGATIVE INTERVIEW, SHE DID NOT SPECIFICALLY ASK MR. EDGERSON ABOUT ELM 665.13 DISCHARGE OF DUTIES. SHE SAID THAT SHE DID ASK HIM ABOUT ELM 665.15 OBEDIENCE TO ORDERS. SHE ACKNOWLEDGED THAT NEITHER OF THESE PROVISIONS WERE REFERRED TO IN HER NOTES ON THE INVESTIGATIVE INTERVIEW

C-31277 ARBITRATOR WOLITZ

- SUPERVISOR REED ALSO ACKNOWLEDGED THAT SHE DID NOT SPECIFICALLY ASK HIM ABOUT M-41 112.1 OR 112.2. WE NOTE THAT THE FIRST QUESTION ON THE INVESTIGATIVE INTERVIEW READS: ARE YOU AWARE OF THE M-41, 112.3, 112.31 AND 112.32 SECURITY, THAT YOU MUST PROTECT ALL MAIL, MONEY AND EQUIPMENT ENTRUSTED TO YOUR CARE AND THAT YOU MUST RETURN ALL MAIL, MONEY AND EQUIPMENT TO THE POST OFFICE AT THE END OF THE WORKDAY? MR. EDGERSON ANSWERED, YES.

C-31277 ARBITRATOR WOLITZ

- THE UNION POINTS OUT IN ITS BRIEF THAT THE POSTAL SERVICE CITES DIFFERENT PROVISIONS IN THE INVESTIGATIVE INTERVIEW, THE DISCIPLINARY ACTION REQUEST, AND THE NOTICE OF REMOVAL AND THAT IT NEVER QUESTIONED MR. EDGERSON ON THE PROVISIONS HE IS CHARGED WITH VIOLATING IN THE NOTICE OF REMOVAL (ELM 665.13; ELM 665.15; M-41 112.1 AND 112.2). SUPERVISOR REED ACKNOWLEDGED ON CROSS EXAMINATION THAT SHE DID NOT ASK MR. EDGERSON ABOUT VIOLATING THESE SPECIFIC RULES AT THE INVESTIGATIVE INTERVIEW. THE UNION POINTS OUT THAT THIS IS A VIOLATION OF MR. EDGERSON'S DUE PROCESS RIGHTS TO BE INFORMED OF THE CHARGES AGAINST HIM AND TO BE ABLE TO PROVIDE A DEFENSE AGAINST THESE CHARGES.

C-31277 ARBITRATOR WOLITZ

- THE INVESTIGATIVE INTERVIEW IS HIS OPPORTUNITY TO DO THAT, BUT HE WAS NOT ASKED ABOUT THE PROVISIONS WHICH HE WAS CHARGED WITH VIOLATION. WE NOTE A COMPANION PROBLEM TO THIS. THE POSTAL SERVICE HAS NOT PROVEN THAT MR. EDGERSON HAS VIOLATED THE PROVISIONS HE WAS CHARGE WITH VIOLATING, WITH THE POSSIBLE EXCEPTION OF 665.13 EMPLOYEES ARE EXPECTED TO DISCHARGE THEIR ASSIGNED DUTIES CONSCIENTIOUSLY AND EFFECTIVELY. IT CAN BE ARGUED THAT LOSING AN ARROW KEY IS A FAILURE TO DISCHARGE THE DUTY TO PROTECT THE ARROW KEY CONSCIENTIOUSLY AND EFFECTIVELY.

BE THOROUGH ABOUT IT

- DON'T LET MANAGEMENT ASK A CARRIER TWO QUESTIONS IN A QUESTION. WHEN THEY ARE ASKING QUESTIONS IN THE INVESTIGATIVE INTERVIEW DO NOT LET THEM PIGGYBACK A QUESTION WITH A QUESTION. STOP THEM IN THE INTERVIEW AND TELL THEM TO SEPARATE THE QUESTIONS TO TWO SEPARATE QUESTIONS
- IT IS UP TO THE SHOP STEWARD TO MAKE SURE THAT MANAGEMENT DID A THOROUGH INVESTIGATION AND WE SHOULD BE STARTING WITH THE QUESTIONS IN THE INVESTIGATIVE INTERVIEW TO MAKE SURE THAT THEY CAN PROVE THEIR CASE WITH THE ANSWERS THAT THEY RECEIVED
- WE SHOULD BE CATCHING MANAGEMENT MORE AT INFORMAL A AND FORMAL A MAKING SURE THAT WE HOLD MANAGEMENT ACCOUNTABLE TO DO A COMPLETE INVESTIGATION

EXAMPLE OF ASSUMPTION

- CARRIER IS CAUGHT BY THE POSTAL INSPECTORS AFTER WATCHING THE CARRIER ON THE STREET DRINKING OUT OF FLASK AND TEARING PAGES OUT OF CUSTOMERS MAGAZINES AND ROLLING UP A SUBSTANCE AND SMOKING IT WHILE ON THE CLOCK.
- POSTAL INSPECTORS BUSTED THE CARRIER ON THE STREET AND SAID THAT THE FLASK SMELT LIKE IT HAD CONTAINED AN ALCOHOLIC LIQUID AND FOUND MARIJUANA IN THE BACKPACK OF THE CARRIER
- DURING THEIR INVESTIGATIVE INTERVIEW MANAGEMENT ASKED IF THE CARRIER WAS AWARE OF THE FACT THAT THEY ARE NOT ALLOWED TO HAVE OR CONSUME ALCOHOL WHILE ON THE CLOCK, CARRIER ANSWERED YES
- MANAGEMENT ALSO ASKED IF THE CARRIER WAS AWARE THAT THEY WERE NOT ALLOWED TO EITHER HAVE IN THEIR POSSESSION OR TO DO ILLEGAL DRUGS WHILE ON THE CLOCK. CARRIER ANSWERED YES.

NEVER JUST ASSUME

- WHEN THE STEWARD INTERVIEWS MANAGEMENT DURING THEIR OWN INVESTIGATION THEY SHOULD BE ASKING THEM IF THEY ARE AWARE THAT THEY ARE NOT TO DRINK AND HAVE ILLEGAL DRUGS WITH THEM WHILE ON DUTY. IF THEY ANSWER YES, THEN YOU CAN THEN ASK THEM WERE YOU THEN DRINKING AND DOING DRUGS WHILE ON DUTY? JUST BECAUSE YOU HAD THEM, DOES THAT MEAN THAT YOU WERE DRINKING OR SMOKING THEM WHILE ON DUTY?
- JUST BECAUSE A PERSON IS AWARE OF A RULE DOES NOT MAKE THEM GUILTY OF THAT RULE SIMPLY BY ASSUMPTION
- DURING THEIR INVESTIGATION MANAGEMENT NEVER EVEN ASKED THE CARRIER POINT BLANK IF THEY HAD CONSUMED ALCOHOL OR IF THEY WERE SMOKING MARIJUANA WHILE ON THE CLOCK. THEY JUST ASSUMED THAT BECAUSE SHE HAD THEM THAT SHE WAS GUILTY

WHAT'S IN A QUESTION?

MANAGEMENT CAN ASK ALL THE QUESTIONS THAT THEY WANT TO, BUT IF THEY NEVER JUST COME OUT AND ASK THEY ARE ONLY MAKING ASSUMPTIONS

NEVER LET MANAGEMENT ASK ACCUSATORY QUESTIONS IN AN INTERVIEW. YOU NEED TO STOP THEM AND MAKE THEM EITHER CHANGE THE QUESTION OR SCRATCH THE QUESTION ALL TOGETHER

EXAMPLES OF ACCUSATORY QUESTIONS

- WHY DID YOU CHOOSE TO CAUSE A HOSTILE WORK ENVIRONMENT WHEN THEY SUPERVISOR ONLY ASKED YOU TO BE BACK IN 8 HOURS?
- WHEN YOU CAUSED THE MOTOR VEHICLE ACCIDENT, WERE YOU ON YOUR CELL PHONE?
- WHEN YOU DELIBERATELY MISDELIVERED THIS PARCEL WHY DID YOU SCAN IT AT THE PORCH AND NOT THE MAILBOX?

WE'LL TAKE IT

- IF AT ANYTIME THE MANAGER SAYS THAT YOU CAN NOT TELL THEM WHAT QUESTIONS TO ASK, THE SHOP STEWARD SHOULD JUST SAY OKAY. WHEN THE MANAGER ASKS THE CARRIER THE SAME ACCUSATORY QUESTION YOU SHOULD ADVISE THE CARRIER NOT TO ANSWER
- THEY CAN ASK ANY QUESTION THEY WANT TO AND THE CARRIER CAN ANSWER ANYWAY THAT THEY WANT TO
- IF THEY GET UPSET AND STOP THE INTERVIEW THEN WE KNOW THAT THE INVESTIGATION WAS NOT COMPLETE, BUT WE WILL TAKE IT

M-01668 NLRB DECISION STATES IN PART:

- IN USPS 288 NLRB 864, 867 (1988), A UNION STEWARD DID NOT PARTICIPATE AS A SILENT OBSERVER DURING AN INVESTIGATIVE INTERVIEW. DURING THE BEGINNING OF THE INTERVIEW, THE STEWARD ASKED THE MANAGER QUESTIONS ABOUT HIS INVESTIGATION INTO THE ALLEGED MISCONDUCT. WHILE THE MANAGER ANSWERED THE QUESTIONS, HE ASKED THE STEWARD TO REFRAIN FROM INTERRUPTING AND TO PERMIT THE EMPLOYEE TO ANSWER THE QUESTIONS DIRECTED TO HER.

M-01668 NLRB DECISION STATES IN PART:

- LATER IN THE SAME INTERVIEW, THE STEWARD AGAIN INTERRUPTED WITH CHALLENGING QUESTIONS AND THE MANAGER AGAIN ASKED HIM NOT TO INTERRUPT. IN ALL, THE STEWARD SPOKE UP THREE TIMES DURING THE INTERVIEW AND WAS ACCUSED OF INTERRUPTING THE INTERVIEW IN EACH INSTANCE. THE JUDGE CONCLUDED THAT THE STEWARD'S INTERRUPTIONS DID NOT APPEAR TO BE THOSE OF AN OBSTRUCTIONIST, BUT RATHER REACTIONS TO THE MANAGERS ACCUSATIONS THAT THE EMPLOYEE HAD ENGAGED IN UNLAWFUL CONDUCT.

M-01668 NLRB DECISION STATES IN PART:

- THE JUDGE WENT ON TO NOTE THAT THE STEWARD SEEMED TO BE TRYING TO PARTICIPATE AND TO ASSIST AND PROTECT THE EMPLOYEE. THE JUDGE ALSO NOTED THAT THE STEWARD'S EFFORTS WERE LOW KEY AND CONCILIATORY. THE BOARD AFFIRMED THE ADMINISTRATIVE LAW JUDGE IN FINDING THAT THE EMPLOYER DENIED THE STEWARD THE RIGHT TO PARTICIPATE IN THE EMPLOYEES INTERVIEW. THUS, WHILE THE FACTS OF THIS EARLIER CASE ARE NOT TOTALLY ANALOGOUS TO THE FACTS HEREIN, THE CONDUCT OF THE TWO STEWARDS IS SIMILAR. AS POINTED OUT BY COUNSEL FOR THE GENERAL COUNSEL KUCH'S ANSWER TO MIRANDA'S QUESTION COULD HAVE TRIGGERED A TERMINATION. HE HAD ALREADY ACKNOWLEDGED THAT HE WAS AWARE THAT HE HAD LEFT THE DPS MAIL AT THE POSTAL FACILITY AND HE HAD OPTED TO FINISH HIS ROUTE WITHOUT GOING BACK FOR THE MAIL

M-01668 NLRB DECISION STATES IN PART:

- HAD HE THEN ACKNOWLEDGED THAT HE WAS AWARE OF THE PENALTY FOR WILLFULLY DELAYING THE MAIL, HE MAY HAVE PUT HIMSELF IN AN INDEFENSIBLE POSITION. AS IT TURNS OUT, HE DIDN'T REALLY ANSWER MIRANDA'S QUESTION AND HE SIMPLY POINTED OUT THAT OTHER EMPLOYEES HAD ALSO LEFT THE MAIL BEHIND. DALY'S INTERRUPTION, HOWEVER, APPEARED TO BE AN ATTEMPT TO ASSIST KUCH AND TO PROTECT HIM FROM UNWITTINGLY ADMITTING TO SOMETHING THAT COULD TRIGGER HIS DISCHARGE.

M-01668 NLRB DECISION STATES IN PART:

- ADDITIONALLY, BECAUSE OF HER PARTICULAR WORDING OR PHRASING, MIRANDA COULD HAVE ELICITED AN ERRONEOUS ANSWER TO HER QUESTION. ASKING KUCH IF HE WERE AWARE OF THE PENALTY FOR WILLFULLY DELAYING THE MAIL IS MUCH AKIN TO THE AGE-OLD LOADED AND MISLEADING QUESTION “ARE YOU STILL BEATING YOUR WIFE.” INASMUCH AS MIRANDA ACKNOWLEDGED THAT IF KUCH ANSWERED “YES” SHE WOULD HAVE UNDERSTOOD HIS RESPONSE TO MEAN THAT HE HAD WILLFULLY DELAYED THE MAIL. IT IS REASONABLE THAT DALY WOULD HAVE WANTED TO ASSIST KUCH IN RESPONDING TO THIS POTENTIALLY INCRIMINATING QUESTION

AFTER THE INVESTIGATIVE INTERVIEW

- SHOP STEWARDS SHOULD BE ASKING FOR A COPY OF MANAGEMENT'S QUESTIONS AND NOTES TO COMPARE WITH WHAT THE SHOP STEWARD, VERBATIM, WROTE DOWN
- IF THERE ARE ANY OTHER QUESTIONS, ANSWERS, OR IF THE QUESTIONS AND ANSWERS ARE DIFFERENT WE NEED TO INTERVIEW THAT MANAGER AND ASK WHY. SHOP STEWARDS SHOULD HAVE THIS IN THEIR CONTENTIONS THAT THIS TOOK PLACE BECAUSE NOW THE INTERVIEW IS NO LONGER OBJECTIVE AND THAT VIOLATES THE JUST CAUSE PROVISION

WAS A THOROUGH AND OBJECTIVE INVESTIGATION DONE?

- THOROUGH MEANS-

- COMPLETE WITH REGARD TO EVERY DETAIL
- NOT SUPERFICIAL OR PARTIAL

IN YOUR CONTENTIONS YOU SHOULD GET THE DEFINITIONS OF THESE WORDS AND CONTEND THEM

- OBJECTIVE MEANS-

- NOT INFLUENCED BY PERSONAL FEELINGS OR OPINIONS IN CONSIDERING AND REPRESENTING FACTS
- CONTRAST WITH SUBJECTIVE

BACKSTORY OF THE CASE

- LETTER CARRIER IS OUTSIDE ON THE BACK DOCK LOADING THEIR PARCELS AND THE SUPERVISOR COMES OUT AND SAYS HEY WHAT ARE YOU DOING OUT HERE, YOU KNOW YOU HAVE TO BE INSIDE DOING YOUR WORK. THE CARRIER GOES OFF ON THE SUPERVISOR, CUSSING THEM OUT.
- THE STATION MANAGER COMES OUT AND THE CARRIER GOES OFF ON THEM TOO. CUSSING THEM OUT.

INVESTIGATIVE INTERVIEW

- IN THE INVESTIGATIVE INTERVIEW THE SUPERVISOR ASKS THE CARRIER THIS:
 - DID YOU WORK ON SUCH AND SUCH DATE: YES, I DID
 - WHEN YOU WERE ON THE BACK DOCK LOADING UP YOUR PARCELS DID SUPERVISOR SO AND SO ASK YOU TO GO BACK INSIDE? YES, HE DID
 - DID YOU CURSE AT HIM AT THAT TIME? YES, I DID
 - DID THE STATION MANAGER COME OUT AND ASK YOU TO QUIT CURSING? YES, SHE DID
 - DID YOU CURSE HER OUT? YES, I DID
 - WHY DID YOU CURSE THOSE PEOPLE OUT? AND HE GAVE HIS REASON
- THAT WAS THE INVESTIGATIVE INTERVIEW

LETTER OF CHARGES (FOUL LANGUAGE)

- UNACCEPTABLE CONDUCT
 - SPECIFICATION:
 - ON FEBRUARY 8, 2019 YOU MADE IMPROPER INTIMIDATING STATEMENTS TO YOUR SUPERVISORS AND YOU CONDUCTED YOURSELF IN AN INTIMIDATING MANNER IMPLYING POTENTIAL BODILY HARM.

BACKGROUND

- BACKGROUND:
 - CITY CARRIER AT THIS POST OFFICE LOCATED AT THIS STATE YOU ENTERED INTO THE POST OFFICE ON JUNE 24, 2006. ON FEBRUARY 8, 2019 YOU WERE LOADING YOUR PARCELS AT THE DOCK LOCATION OF THIS POST OFFICE WHEN THE SUPERVISOR CAME OUT AND INSTRUCTED YOU TO COME BACK INSIDE AND CASE YOUR MAIL. YOU BECAME ARGUMENTATIVE AND ASKED SUPERVISOR HAMILTON WHAT DIFFERENCE IT MADE IF YOU LOADED YOUR PARCELS FIRST OR CASED MAIL FIRST. HE INSTRUCTED YOU AGAIN TO STOP LOADING YOUR PARCELS AND COME INSIDE AND CASE YOUR MAIL

BACKGROUND

- YOU QUICKLY APPROACHED SUPERVISOR HAMILTON TOOK OFF YOUR SUNGLASSES AND HAT AND STATED “DON’T FUCK WITH ME YOU BITCH, YOU PUNK ASS BITCH”. I CAME OUTSIDE AND INSTRUCTED YOU TO CALM DOWN TO WHICH YOU TOLD ME TO MIND MY OWN DAMNED BUSINESS. I TOLD YOU THAT THIS WAS MY BUSINESS AND I NEEDED TO KNOW WHAT WAS GOING ON. YOU STATED THAT BILL TOLD ME THAT HE DON’T WANT ME TO LOAD MY PACKAGES FIRST AND I ASKED HIM WHAT’S THE DIFFERENCE. I TRIED TO EXPLAIN TO YOU THAT WAS NOT THE PROCEDURE AND YOU NEEDED TO FOLLOW INSTRUCTIONS.

BACKGROUND

- YOU REPLIED "FUCK YOUR INSTRUCTIONS. THERE AINT NO DIFFERNC E IN ME LOADING MY PACKAGES NOT OR LATER". I TOLD YOU YES THERE WAS AND IF YOU COULDN'T FOLLOW INSTRUCTION THEN TO CLOCK OUT AND LEAVE THE PREMISSES. I WAS POINTING MY FINGER AT YOUR WHILE I WAS TALKING TO YOU AND YOU STATED "I AINT GOING NO WHERE YOU PUNK ASS BITCH, AND DON'T POINT YOUR DAMNED FINGER AT ME. BOTH YOU MOTHERFUCKERS CAN GO TO HELL. I WILL TAKE THAT FINGER AND RAM IT UP YOUR ASS". YOU THEN MOVED TOWARDS ME AND STATED SUPERVISOR SO AND SO "I'M TIRED OF THAT PUNK ASS BITCH AND I'LL HANDLE THAT MOTHERFUCKER TOO".

NEVER MENTIONED IN THE INTERVIEW

- NOT ONCE DID ANYONE ASK THE CARRIER WHETHER HE ACTUALLY STATED EVERYTHING THAT WAS QUOTED IN THE CHARGE. DID YOU STATE THAT YOU WERE GOING TO DO THIS TO ME, DID YOU STATED THAT YOU WERE GOING TO DO THIS TO THE SUPERVISOR
- THE CARRIER DID NOT HAVE A CHANCE TO DEFEND HIMSELF OF WHETHER HE SAID THOSE THINGS OR NOT

THE CHARGE

- I CONDUCTED AN INVESTIGATIVE INTERVIEW WITH YOU ON FEBRUARY 11, 2019. ALSO PRESENT AT THE INTERVIEW WAS THE MPOO, JOHN DOE, AND UNION REPRESENTATIVE, JANE DOE. YOU DID NOT PROVIDE JUSTIFICATION FOR YOUR ACTIONS. YOU DID NOT DISPUTE WHAT HAPPENED ON FEBRUARY 8, 2019.
- DURING THE INVESTIGATIVE INTERVIEW THE CARRIER WAS ONLY EVER ASKED IF HE CUSSED. NOT SPECIFICALLY WHAT WAS SUPPOSEDLY SAID
- JOHN DOE, MPOO, WAS THE CONCURRING OFFICIAL ON THIS CASE. THAT'S THE BIGGEST DUE PROCESS VIOLATION YOU WILL EVER FIND BECAUSE HE'S THE ONE WHO'S GOING TO TAKE THIS AND REVIEW IT. IT IS SUPPOSED TO BE AN INDEPENDENT REVIEW. A NEUTRAL SET OF EYES ON THE CASE

ARBITRATION LANGUAGE

- THE UNION RAISED SEVERAL DUE PROCESS CLAIMS AT THE HEARING. HOWEVER, THERE WAS NO INDICATION THAT THOSE ARGUMENTS WERE BROUGHT FORTH DURING THE GRIEVANCE PROCESS. THE UNION CONTENDS THAT DUE PROCESS IS PART OF JUST CAUSE. THAT MAY BE THE CASE BUT THE UNION IS REQUIRED BY ARTICLE 15 SECTION 2 FORMAL STEP A TO MAKE A FULL AND COMPLETE STATEMENT OF THE FACTS RELIED UPON. THAT IS THE ONLY WAY IN WHICH THE POSTAL SERVICE MAY CONSIDER AND POSSIBLY AGREE WITH THE UNIONS CONTENTIONS. ARBITRATION IS NOT THE FORUM TO RAISE DUE PROCESS ISSUES FOR THE FIRST TIME. THE ONLY CLAIM THAT WAS RAISED IN THE GRIEVANCE PROCESS WAS THAT OF DESPAIRED TREATMENT.

FACT CHECK THE EVIDENCE

- MAKE SURE THAT THE WHOLE INVESTIGATION WAS THOROUGH AND OBJECTIVE
- NOT JUST THE INTERVIEW PORTION MAKE SURE THAT MANAGEMENT GOT STATEMENTS, DID INTERVIEWS, HAS RECEIPTS, PAPERWORK ETC. TO SHOW THAT THEY DID MORE THAN JUST WRITE UP SOME QUESTIONS AND CALL LABOR FOR ADVICE
- IF MANAGEMENT DID NOT DO A COMPLETE AND THOROUGH INVESTIGATION IT IS UP TO THE SHOP STEWARD TO DO ONE TO PROVE THAT MANAGEMENT DID NOT
- WHATEVER INVESTIGATION MANAGEMENT DID WE HAVE TO FACT CHECK IT AND MAKE SURE IT IS ACTUALLY TRUE AND OBJECTIVE

CONTENTIONS

- MAKE SURE THAT ALL OF THE PEOPLE WHO WERE IN THE INVESTIGATIVE INTERVIEW ARE LISTED. IF ANYONE ELSE IN MANAGEMENT IS THE CONCURRING OFFICIAL WE NEED TO MAKE THAT CONTENTION
- CHECK TO MAKE SURE THAT ALL OF THE CONTRACTUAL AND HANDBOOK PROVISIONS THAT MANAGEMENT CITES AGAINST THE CARRIER ARE QUESTIONED AND MENTIONED IN THAT INVESTIGATIVE INTERVIEW, OTHERWISE THE CARRIER'S DAY IN COURT RIGHT WAS VIOLATED
- MAKE SURE THAT THE CHARGE AND THE INVESTIGATIVE INTERVIEW GO HAND IN HAND
- ALWAYS GET A COPY OF MANAGEMENT'S NOTES OF THE INVESTIGATIVE INTERVIEW AND COMPARE THEM WITH THE SHOP STEWARD'S NOTES